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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 26 May 1995 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

As is well known, the Congress of the United States of America is discussing new legislation to tighten the United States economic, trade and financial embargo against Cuba and to expand its extraterritorial scope. As one of its key elements, it takes up again the question of former United States property in Cuba and the nationalization process carried out in my country during the early 1960s.

In that connection, I have the honour to send you, annexed hereto, a document entitled "Renewed attempts to tighten the United States economic embargo against Cuba and the truth about the Cuban nationalizations", which I should like to request you to have circulated as a document of the General Assembly under item 27 of the preliminary list.

(Signed) Bruno RODRIGUEZ
Ambassador
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ANNEX

Document entitled "Renewed attempts to tighten the United States economic embargo against Cuba and the truth about the Cuban nationalizations", issued by the Government of Cuba

A study by a group of experts concerning the economic embargo imposed by the United States of America against Cuba and the attempt by the United States Government to present the nationalizations of foreign property in Cuba as a pretext for the embargo was distributed as an official document at the forty-eighth session of the General Assembly (A/48/258 of 12 July 1993).

The document explains why the United States cannot use the argument of the nationalizations of foreign property in Cuba to justify its embargo policy against the country, presenting it as an insurmountable obstacle to the rescission of the policy. It also addresses the question of the legitimacy of the Cuban nationalization process, which was protected by international law and justified by the national interest of a State embarking on radical social change. Lastly, it reaffirms that no State can be subjected to economic, political or any other kind of coercion for exercising the right to nationalization, which constitutes a sovereign decision.

A number of bills directed against Cuba have been introduced at the 104th session of the United States Congress. They include, in particular, the so-called "Cuban Liberty and Democratic Solidarity Act of 1995", which seeks to internationalize and thereby intensify the country's unilateral and illegal economic embargo against Cuba, applying coercive measures to the international community for the purpose.

Such action undermines trade relations and investment by nationals of third countries in Cuba and interferes with the sovereignty of the States concerned in the matter of deciding how to conduct their international relations. It also disregards, yet again, the resolution adopted by the General Assembly on 26 October 1994, by an overwhelming majority of 101 in favour and only 2 against, which found the embargo to be illegal and urged that it should be lifted.

The above-mentioned bill furthermore seeks to cast doubts on the legitimacy of the Cuban nationalization process and to create fear among investors from other countries, who are purportedly "trafficking" with United States property in Cuba. To that end, the bill seeks to institutionalize various threats of retaliation against enterprises and individuals investing in property that belonged in the past to "United States nationals", arbitrarily extending that status to persons who, at the time of the nationalization, were Cuban citizens and subsequently acquired United States citizenship.

The object of this report is to show that the Government of Cuba has scrupulously fulfilled its obligations, assumed voluntarily and in good faith, to compensate for all foreign property nationalized under legislation promulgated since 1959, except United States property, and to state the reasons for this exception.

The report also describes the legal guarantees that Cuba offers to any foreign counterpart who wishes to do business with the country.

I

Before reviewing the nationalization process in Cuba, it is important to mention certain relevant concepts that have been recognized by the international community.

The General Assembly and other organs of the United Nations have confirmed, in what have become landmark resolutions, that countries engaged in a process of social transformation have the right under international law to nationalize foreign property and that the question of compensation is a matter for sovereign decision by the nationalizing country.

In 1973, the General Assembly, in paragraph 3 of its resolution 3171 (XXVIII):

> "Affirms that the application of the principle of nationalization carried out by States, as an expression of their sovereignty in order to safeguard their natural resources, implies that each State is entitled to determine the amount of possible compensation and the mode of payment, and that any disputes which might arise should be settled in accordance with national legislation of each State carrying out such measures".

In 1974 the General Assembly adopted resolution 3201 (S-VI), entitled "Declaration on the establishment of a new international economic order", which recognized as one of its principles:

> "Full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right".

Shortly thereafter, the General Assembly, in resolution 3281 (XXIX), adopted the Charter of Economic Rights and Duties of States, article 2, paragraph 2 (c), of which stipulates that each State has the right:

> "To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equality of States and in accordance with the principle of free choice of means".

The views and practice of States are consistent with these General Assembly resolutions. States in Asia, Africa, Latin America and Eastern Europe have carried out extensive nationalizations of property belonging to foreigners without incurring any obligation under international law in relation to the payment of compensation.

II

The Cuban nationalizations were carried out in full compliance with the principles set forth above.

The Cuban process was not discriminatory, nor was it undertaken in retaliation for the elimination of the sugar quota, as alleged by some United States sources. Nationalization affected property held by Cubans and foreigners alike. The particularity of the situation lay in the fact that the country's best land, mines, leading banks, telephone system, communications, electric power system and sugar mills were in United States hands.

In the months following the triumph of the revolution in 1959, the United States Government began to harass the country in open opposition to the new process under way in Cuban society. The nationalization of United States property was begun in 1960 in response to continuous attacks on Cuban economic targets combined with United States domination of all basic sectors of activity in the country and the need to consolidate the new economic, political and social process.

Act No. 851/60, promulgated on 6 July 1960, authorized the President of the Republic and the Prime Minister to provide jointly, through resolutions, for the nationalization by expropriation of property in Cuba belonging to natural or juridical persons having the status of United States nationals.

The legislation established procedures for paying for expropriated property through the issue of government bonds for that purpose by the Cuban State. The interest on the bonds was to be paid out of a fund consisting of 25 per cent of the foreign exchange received from sugar sales to the United States from Cuba each calendar year in excess of three million Spanish long tons at a price of not less than 5.75 United States cents per pound. These bonds would be amortized within a period of at least 30 years from the date of expropriation of the property.

The transparent procedure instituted by the Cuban authorities is not only recognized by international law; courts in the United States itself have confirmed the validity under international legislation of the Cuban nationalization process in lawsuits brought by United States nationals.

One example is the decision of the United States Supreme Court in the well-known Sabbatino case, in which the merits of the "act of state" represented by the Cuban nationalizations were examined in the lawsuit concerning shipments of sugar by the Compañía Azucarera Vertientes to the United States company Farr, Whitlock & Co. in New York in February and June 1960.

On 24 March 1964, the Court, voting 8 to 1 in favour of Cuba, handed down the following judgement which has become legal doctrine: "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

It concluded: "However offensive to the public policy of this country and its constituent States an expropriation of this kind [376 U.S. 437] may be, we conclude that both the national interest and progress toward the goal of establishing the rule of law among nations are best served by maintaining intact the act of state doctrine in this realm of its application."

However, while the United States courts were still hearing cases related to the question of nationalizations in Cuba, the United States Government, on 6 February 1962, proclaimed a full-scale economic blockade of Cuba; this policy had already been set in motion and was being gradually expanded, restricting, inter alia, exports of Cuban sugar to the United States.

It therefore follows that the non-payment of compensation for expropriated property to United States nationals in Cuba may also be attributed to the embargo imposed by the United States, inasmuch as the total ban on trade in sugar between the two countries was responsible for preventing United States citizens and entities from receiving the compensation provided for in the above-mentioned Cuban legislation.

Unlike other countries, the United States Government did not opt for negotiation to defend the interests of its nationals; United States citizens were denied access to the mode of payment established by Act No. 851/60 by their own Government when it eliminated the Cuban sugar quota and thereby automatically and arbitrarily deprived them of their right to receive appropriate compensation.

III

The United States is seeking to undermine investor confidence by alleging a so-called right to United States property in Cuba and holding itself up as the "censor" of potential foreign investment in sectors which may include former United States property.

It seeks recognition of its argument that former United States-owned property cannot be freely used and that such property will probably be returned in negotiations with a future Government of Cuba.

It claims, moreover, that international law requires the Government of Cuba to pay "prompt, adequate and effective compensation", a claim which in fact lacks any basis, since the issue of compensation and its modalities is within the competence of the State carrying out the nationalization.

In sum, the United States is attempting to exercise a right of prior authorization over investments in Cuba by nationals of third countries.

The reply to such claims is clear: there is no United States property in Cuba. Ownership of all such property was transferred to the Cuban people through a process of nationalization, in conformity with international law which was carried out through expropriation in exercise of the power of eminent domain under article 24 of the Cuban Constitution of 1940 and the corresponding article of the Fundamental Law of 7 February 1959. Moreover, the property of the United States in Cuba was liquidated under the international Claims Settlement Act of 16 October 1964, of the Cuba Programme of the United States Foreign Claims Settlement Commission, and converted into bonds.

Article 15 (b) of the Constitution of the Republic of Cuba reaffirms that the sugar mills, factories, chief means of transportation and all those enterprises, banks and installations that have been nationalized and expropriated are the property of the socialist State and of the entire people.

The Cuban nationalizations formed part of the measures that were necessary to guarantee the economic and social development of the Cuban people and, even though there was no obligation at that time under international law to pay compensation for nationalized property, the Cuban laws governing nationalization contained such a provision.

The nationalizations returned the properties to the people of Cuba, who are using and managing them fully in accordance with the Constitution and the law. Foreign investors have nothing to fear, for their investments are protected under the Constitution.

The legal framework in Cuba is constantly being improved to protect and guarantee foreign investments.

The guarantees derive from a solid base. Under article 23 of the Constitution of the Republic, the State recognizes ownership of joint ventures, enterprises and economic partnerships which are constituted in accordance with the law.

In addition, Decree-Law 50 of 1982 has regulated all economic partnerships and foreign investments in Cuba to date and provides a broad and flexible legal framework for them.

Another Investment Act is currently being drafted to make the legislation in force even more flexible, in keeping with the development of new economic modalities.

These have been supplemented by investment protection agreements signed with the various countries which currently have joint ventures with Cuba.

The process of investment in Cuba thus has impeccable legal support, reinforced by the acknowledged transparency of the procedures employed by the Cuban authorities in dealing with each case.

IV

The refusal of the United States to join Cuba in seeking a negotiated solution to the problem of compensation contrasts with the international practice of that country in other similar cases.

Since the Second World War, the United States has negotiated 10 lump sum agreements in settlement of claims arising from the widespread nationalization of United States-owned property in other countries (see, for example, Lilich and Weston, International Claims: Their Settlement By Lump Sum Agreements, 1975).

Agreement on a lump sum settlement, the method used in the agreements concluded since the end of the Second World War under the above-mentioned modality known as "lump sum agreements", is reached through diplomatic negotiations between Governments and is aimed at establishing a lump sum or total amount of compensation payable over a number of years and distributed to the parties concerned by the Government which represents them. The period over which the compensation is paid varies, and payment may be in kind or in cash as well as in the form of compensation for reciprocal debts, as agreed upon by the parties.

In these settlements, the United States has accepted an average of somewhat less than 50 per cent of the stated value of the nationalized property, without any provision for interest. The average period of time provided in these agreements for the payment of compensation is 20 years.

In the case of Cuba, the Government of the United States must adopt a similarly balanced position and abandon its failed policy of economic coercion, if indeed it wishes to protect the interests of its nationals and to repair the damage which that policy has caused them.

In contrast with the position taken by the Government of the United States, other Governments have taken up in the correct manner the issue of their citizens' ownership of properties in Cuba and, through negotiations conducted with the Government of Cuba on the basis of equality and mutual respect, agreements advantageous to all parties have been reached.

Cuba negotiated and ensured the timely payment of compensation through lump sum agreements concluded and implemented with Canada, France, Spain and Switzerland.

Agreements were also reached with Italy, Mexico and the United Kingdom, the aim in those cases being to satisfy specific claims of nationals of those countries.

The above-mentioned countries, respecting the decisions of the people of Cuba, desirous of ensuring that their nationals suffered no harm as a result of misguided foreign policy decisions, on the basis of good faith and without resorting to reprisals of any sort, have signed the following agreements in settlement of foreign claims in respect of property affected by Cuban nationalizations after January 1959:

Agreement of 2 March 1962 between the Revolutionary Government and the Government of the Swiss Confederation concerning compensation for Swiss property, rights and interests affected by the laws enacted by the Revolutionary Government of the Republic of Cuba beginning on 1 January 1959.

Agreement of 16 March 1967 between the Revolutionary Government of Cuba and the Government of the French Republic concerning compensation for French property, rights and interests affected by the laws and measures enacted by the Revolutionary Government of the Republic of Cuba beginning on 1 January 1959.

Exchange of notes of 18 October 1978 between the Government of the Republic of Cuba and the United Kingdom of Great Britain and Northern Ireland on compensation of British nationals following the application of nationalizations, expropriations and other similar laws and measures beginning on 1 January 1959.

Agreement of 7 November 1980 between the Government of the Republic of Cuba and the Government of Canada concerning the settlement of Canadian claims.

Agreement of 26 January 1988 between the Republic of Cuba and the Kingdom of Spain on compensation for the property of Spanish nationals affected by the laws, regulations and measures enacted by the Government of the Republic of Cuba beginning on 1 January 1959.

The first four agreements have been fully implemented and payments thereunder completed by the Government of Cuba to the respective Governments in accordance with the amount agreed upon as settlement of the claim. The agreement with Spain is being implemented over a stipulated period of 20 years.

Payments as compensation for foreign properties nationalized in Cuba amounted to $60 million, under the agreements concluded with France, Italy, Spain and Switzerland, together with the other countries with which similar claims from individual citizens were satisfied.

Cuba has thus reaffirmed that, in principle, it recognizes these obligations. Only United States claimants have not yet received payments, as already explained, because successive United States Administrations have prevented them from doing so for political reasons.

The seriousness with which the Government of Cuba has fulfilled its international obligations in this field needs no further demonstration.